

EXHIBIT 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Adv.Pro.No.
08-01789(BRL)

Debtor.

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IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,

Plaintiff,

Adv.Pro.No.
09-1182(BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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VIDEOTAPED DEPOSITION of JOHN L.

STEFFENS, as taken by and before NANCY C. BENDISH,
Certified Court Reporter, RMR, CRR and Notary Public
of the States of New York and New Jersey, at the
offices of BAKER & HOSTETLER, 45 Rockefeller Plaza,
New York, New York on Tuesday, October 9, 2012,
commencing at 10:10 a.m.

1 Q. You mentioned discussing
2 diversification. Did you ever have occasion to
3 mention to Mr. Merkin your philosophy to limit the
4 concentration of investments in any particular fund
5 as part of Spring Mountain's basic philosophy?

6 MS. PRINC: Object to form.

7 A. Yes. Yeah, we talked about the
8 creation of the funds. We generally, you know, had
9 views that 25 to 30 funds were an appropriate
10 diversification structure. In some of our later
11 funds we had as many as 60 or 65 funds. So, we
12 discussed the makeup of those funds, you know,
13 certainly from time to time.

14 Q. Did you ever, during the course of
15 these conversations with Mr. Merkin, did he ever
16 explain to you the things he did in connection with
17 due diligence on the investments he was managing?

18 A. Yes. It's different from the two
19 funds, but we discussed numerous times the
20 conversations that he'd had with Bernie Madoff in
21 terms of looking at how Ascot was structured and
22 whether Bernie was going to change some of his
23 particular views and whether Ezra agreed with that
24 or didn't agree with that.

25 There was certainly one conversation

1 that I recall particularly where Bernie was going to
2 begin to use longer term options called LEAPS and
3 Ezra didn't want to do that because he felt that
4 they added illiquidity to his portfolio.

5 In the case of, in the case of
6 Gabriel and Ariel, we talked about both the private
7 equity positions in those funds, as well as some of
8 the high yield investments in those funds fairly
9 frequently.

10 Q. In these conversations, did
11 Mr. Merkin ever indicate to you that he did any kind
12 of quantitative analysis of the investments he
13 managed?

14 MS. PRINC: Object to the form.

15 A. No. He basically didn't spend much
16 time doing quantitative analysis. His was mostly
17 done on the qualitative side.

18 Q. Did he ever indicate to you who at
19 Gabriel Capital, his company, assisted him in
20 conducting qualitative evaluations of potential
21 investments?

22 MS. PRINC: Object to the form.

23 A. There were several people that helped
24 him with different aspects of certainly the high
25 yield portfolio. David Sherman was one. He had two

1 think it was about five or \$600 million and at the
2 high point it was a billion six. So he had done a
3 terrific job and had been there for quite some time.
4 At UJA he had been there a little bit less, but
5 obviously it's a prestigious organization in New
6 York and in the investment world and the fact that
7 he was chairman of both those investment committees
8 I felt was actually quite significant.

9 Q. Did you, either at the time when you
10 initially invested in Ascot or at some later date,
11 ever discuss with Mr. Merkin any limitations that he
12 placed on Mr. Madoff's right to trade on Ascot's
13 account?

14 MS. PRINC: Object to form.

15 A. It was my understanding that Ezra
16 added value in terms of that account by at least
17 being able to make some of the decisions as to
18 whether they were in the market or out of the
19 market, and it was up to Mr. Madoff to basically
20 execute it.

21 I think that Ezra explained to me
22 there were some issues as it related to the timing
23 of trades. They tried to put them on in relatively
24 short periods so that the fund didn't have excess
25 risk. So, in these kinds of trades you've got to

1 put on three pieces, but the three pieces were
2 supposed to be put on in a very short time frame.

3 Q. And did Mr. Merkin indicate that he
4 played any role in connection with putting those
5 three pieces on in connection with the trades?

6 A. No. My understanding was he did not.
7 He played a role -- there were times when he told me
8 that Madoff was 100 percent in the market and he
9 wasn't 100 percent in the market, and other times
10 when Madoff was, you know, so there was some
11 variance that Ezra had communicated to me that they
12 were not necessarily totally pari passu, and from
13 time to time I saw performance numbers that came
14 from Madoff that said there was a variance between
15 the two. Some of that was related, I think, to the
16 fact that Madoff didn't charge fees, but there was
17 still a performance variance between Ascot and
18 Madoff.

19 Q. All right. Just to clarify. You
20 said that Mr. Merkin told you that there were times
21 when Madoff was 100 percent invested in the market
22 and he was not. Meaning Ascot was not 100 percent
23 in the market?

24 A. Yes.

25 Q. And whose decision did he indicate --

1 A. It's my understanding it was Ezra's
2 decision.

3 Q. So he would -- your understanding
4 from speaking with Mr. Merkin was he would indicate
5 to Mr. Madoff, I don't want to be 100 percent in the
6 market right now or something to that effect?

7 A. I think some of it may have come from
8 that or some of it may have come from the fact that
9 either the market moved and they couldn't get it in
10 at the same prices, I'm not quite sure why, but my
11 understanding is there were times when Ezra was --
12 overrode what Madoff was doing. Exactly what the
13 total background was, I don't know.

14 MR. KREISSMAN: By the way, make sure
15 you let him finish asking the question before you
16 talk. It's hard for the court reporter.

17 THE WITNESS: Okay.

18 Q. Did Mr. Merkin ever explain to you
19 what mechanism he had set up with Mr. Madoff to give
20 him the ability to override Mr. Madoff's decisions?

21 A. I think it was just telephone
22 conversations.

23 Q. Did Mr. Merkin ever indicate to you
24 that he had conducted any due diligence on
25 Mr. Madoff?

1 you have a conversation with Mr. Merkin in which you
2 discussed any issues or concerns that he raised,
3 told you you might want to consider before investing
4 in Ascot?

5 MS. PRINC: Object to form.

6 A. I don't recall any specific
7 conversations before we invested as related to those
8 issues.

9 Q. Let me ask it a little differently.
10 Did you ever have a conversation that
11 you can recall with Mr. Merkin in which he ever
12 identified any particular issue involving Mr. Madoff
13 that he said you should give consideration to in
14 terms of investing with him?

15 MS. PRINC: Object to form.

16 A. No, he did not.

17 Q. Were you aware at the time you
18 invested in Ascot that Mr. Madoff was clearing his
19 own trades?

20 A. No, I was not.

21 Q. What was your understanding --

22 A. Wait a minute. I was aware that he
23 was clearing his own trades for Madoff, but it was
24 my understanding that that wasn't the case for
25 Ascot.

1 Q. Okay. That was going to be my next
2 question.

3 A. Okay.

4 Q. What was your understanding of how
5 the Ascot trades were cleared?

6 A. Initially, originally it was my
7 understanding that they were being cleared through
8 Morgan Stanley.

9 Q. And how did you get that
10 understanding?

11 A. Through talking with Ezra.

12 Q. You said initially that was your
13 understanding. Did you ever have a different
14 understanding?

15 A. Yeah, sometime probably in 2004-2005
16 it was clear that that wasn't the case. That Madoff
17 cleared those trades. The only thing that was
18 basically at Morgan Stanley were I think additions
19 and redemptions from Madoff.

20 Q. And how did you learn in 2004, 2005
21 that Madoff was clearing his own trades?

22 A. Came from a due diligence effort that
23 we had done and conversations with Mike Autera.

24 Q. Was the due diligence effort on
25 behalf of Spring Mountain or some client?

1 Q. Let me start this over again.
2 Explain what LEAPS are.

3 A. LEAPS are long-term options. I
4 believe the absolute definition would be when they
5 start longer than one year.

6 Q. Did you ever have a discussion with
7 Mr. Merkin about Ascot investing in using LEAPS as
8 options?

9 A. He said at one point to me that he
10 had had that conversation with Bernie and decided he
11 did not want to do that because he thought that
12 LEAPS traded less volume and had lower liquidity and
13 didn't want to do that.

14 Q. Did he indicate this was Bernie's
15 idea and he didn't -- and he rejected it?

16 A. That's what he indicated to me, yes.

17 Q. So Mr. Merkin never indicated to you,
18 certainly, that he was buying some new computers to
19 do LEAPS trades and that's one reason why he had to
20 increase his fees; is that correct?

21 A. He did not.

22 Q. You mentioned earlier that you began
23 investing in Ariel and Gabriel about the same time
24 you first invested in Ascot, very early on in Spring
25 Mountain's history. What attracted you to Ariel and

1 Gabriel -- was it both or was it just Gabriel?

2 A. No, it was both.

3 Q. Both.

4 A. They were similar funds. One was for
5 offshore and one was for onshore. So they were
6 similar -- they were certainly, I would characterize
7 them as basically pari passu. There were some
8 technical differences between the two, but they
9 attracted us because, number one, we thought the
10 sector of the business that they were in at the time
11 was a good one. We had just gone through 2001, we'd
12 gone through some credit concerns in 2002, some of
13 the impact of a couple of notable bankruptcies, and
14 so the markets had become quite attractive if one
15 knew what to do in the distressed arena.

16 So, we felt that in comparing, in
17 comparing Gabriel and Ariel to other possibilities
18 of the marketplace, that their comparisons did quite
19 well, and we felt that this was an area that Ezra
20 had been involved in for, at the time probably, I
21 don't know, 12, 15 years, and that we felt very
22 comfortable because we probably had more insights
23 into that fund than we felt we would have from
24 others.

25 Q. All right. And your understanding of

1 the types of investments that fund -- those funds
2 made, were what?

3 A. Well, my understanding was that they
4 made some private equity investments, they made
5 distressed debt investments, and they made merger
6 arbitrage -- merger arbitrage investments.

7 Q. So it's clear on the record, would
8 you explain for us what you mean by private equity
9 investments.

10 A. Sure. They bought securities that
11 were issued by non-publicly traded companies. It
12 could have been either debt or equities.

13 Q. And the second category you said was
14 distressed debt. Would you explain what that is?

15 A. Distressed debt is debt that usually
16 comes about from either a company who has gotten
17 into some degree of financial trouble and people are
18 worried about them going bankrupt, or securities
19 that are likely to come out of bankrupt-type
20 companies.

21 Q. And the third category you mentioned
22 was merger arbitrage. Would you explain what that
23 is?

24 A. Yes. Merger arbitrage is when
25 company A is going to buy company B, they usually

1 say I'm going to pay 50 dollars, but the ratio is,
2 you know, a half a share of one stock for another
3 one, and until that deal closes, usually there is a
4 spread between those two. And Ezra had traded those
5 types of things for a number of years.

6 Q. Was it your understanding that Ariel
7 and Gabriel's investments were largely made through
8 other companies?

9 A. Well, some of them were made through
10 other companies and some of them weren't.

11 Q. What were -- I'm sorry. What were
12 some of the other companies they were made through?

13 A. Well, the distressed piece was
14 basically run by Cohanzick, which was a separate
15 account that was set up for Gabriel and Ariel, run
16 by David Sherman. But David Sherman ran that
17 account within Ezra's offices. Physically he was
18 located in Ezra's offices. So I wouldn't have
19 viewed that as sending the money any other place.

20 On the private equity side, he had a
21 relationship where he co-invested with Cerberus on
22 numerous private equity kinds of investments.

23 Q. And the arbitrage component, was that
24 handled in-house at Ariel and Gabriel?

25 A. My understanding is that was handled

1 primarily in-house.

2 Q. Do you know who handled that?

3 A. Specifically, I don't. I mean, some
4 of it was handled by Ezra in some of those cases. I
5 think that he did less of it after 2001 or '2 than
6 he did prior to that period.

7 Q. Other than these three areas that
8 you've just described, was it your understanding
9 that Ariel or Gabriel invested in any other
10 strategies?

11 A. I think they had hedge strategies
12 that they're related to where they hedge some of
13 those positions by using short indexes and other
14 things in the marketplace to hedge either their
15 distressed book or their private equity book in one
16 form or another.

17 Q. Anything else?

18 A. Not to my knowledge.

19 Q. And your understanding of where Ariel
20 and Gabriel invested that you just described to us,
21 how did you acquire that understanding?

22 A. Well, I acquired that understanding
23 from reading the letters that Ezra put out, from
24 discussing it with Ezra and discussing it with
25 individuals like David Sherman and people at

1 Cerberus who we had a close relationship with.

2 Q. Did Mr. Merkin ever indicate to you
3 at any time that Ariel and Gabriel were also
4 investing through Bernie Madoff?

5 A. No.

6 Q. Did you, when you first invested in
7 Ariel and Gabriel, did you review the offering
8 memorandum?

9 A. Yes.

10 Q. Did you see anything in the offering
11 memorandum that indicated to you that either of the
12 funds was investing through Bernie Madoff or a
13 similar strategy?

14 MS. PRINC: Object to form.

15 A. I think that -- I'm not sure that the
16 offering memorandum, certainly didn't give that
17 indication, but it didn't not give that indication
18 either, so...

19 Q. Didn't say anything one way or the
20 other?

21 A. I don't believe it said anything one
22 way or the other.

23 Q. I think I'm remembering this
24 correctly. You said earlier that you would look at
25 position sheets from time to time?

1 firm called First Manhattan. He is a very well
2 known, very well thought of investor who's had
3 probably a 40-year track record that is extremely
4 good in the money management business.

5 Q. And what was his role with the YU
6 investment committee?

7 A. He was just a member of the YU
8 investment committee, but I think he was also on the
9 YU board. So he'd been involved in Yeshiva for a
10 long time.

11 Q. Did you ever discuss Madoff with
12 Mr. Gottesman?

13 A. I don't believe that I specifically
14 ever discussed Madoff with Sandy.

15 Q. Did you have discussions with him --
16 let me rephrase, sorry.

17 Did you have discussions about Madoff
18 when Mr. Gottesman was present?

19 A. Not -- I mean, the answer would be
20 not that I specifically recall, but it could have
21 easily been. Sandy was there most all the time. So
22 any of those conversations might well have been
23 there when he was there.

24 Q. Did any of the people you
25 specifically mentioned as members of the YU

1 had on their investments with Madoff, what did you
2 take to be their view of investments with Madoff?

3 MR. COLOMBO: Objection, speculation.

4 A. Well, I would have viewed that 500
5 million was significant enough that they spent time
6 and thought that it was a reasonable investment to
7 make.

8 Q. So other than the investors we've
9 already discussed, the Wolfsons, Aozora, Yeshiva
10 University, Sandy Gottesman, BNP Paribas, are you
11 aware of any other sophisticated investors who
12 invested with Madoff?

13 A. Yes. I had conversations with the
14 Mets. I viewed them as sophisticated investors and
15 had, you know, a few conversations with them about
16 investing over time.

17 Q. Are you aware of any others?

18 A. Not off the top of my head.

19 Q. I think you mentioned earlier today
20 JPMorgan?

21 A. Yes. That was all public information
22 and JPMorgan had a Madoff investment and we were
23 aware that Deutsche Bank had a Madoff investment,
24 and I believe Societe Generale had a Madoff
25 investment.

1 due diligence they may or may not have done on
2 Bernie Madoff?

3 A. No.

4 Q. Okay. That's all.

5 A. Can I just expand on it slightly.

6 In the case of BNP Paribas, at least
7 I had an understanding of the due diligence they did
8 for us, so I would have made the assumption in BNP
9 Paribas's case that it was more than just a casual
10 kind of thing. I didn't know specifically what they
11 did, but BNP Paribas was quite active with us, in
12 terms of their due diligence and follow-up, et
13 cetera. So I would have made the assumption that
14 they did something similar, at least as it related
15 to Madoff.

16 Q. Again, Mr. Steffens, I understand
17 you're making that assumption, but you don't know
18 what they did, correct?

19 A. I do not know what they did, no.

20 MR. KREISSMAN: I have nothing for
21 the witness. I think we're done.

22 THE VIDEOGRAPHER: Okay. Going off
23 the record. The time is 3:38.

24 (Deposition concluded.)

25 -o0o-